

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

WASHOE-MILL APARTMENTS,

Plaintiff,

v.

U.S. BANK NATIONAL ASSOCIATION,

Defendant.

Case No. 3:12-cv-00418-MMD-WGC

ORDER

U.S. BANK NATIONAL ASSOCIATION,

Counterclaimant,

v.

WASHOE-MILL APARTMENTS;
SECRETARY SHAUN DONOVAN,

Counter-Defendants.

I. SUMMARY

Before the Court are two motions for fees and costs filed by U.S. Bank National Association (“U.S. Bank”). (Dkt. nos. 54, 55.)

II. BACKGROUND

A. Relevant Facts

The relevant facts are recited in the Court’s previous Orders. The Court will summarize the facts relevant to the Motions.

Plaintiff and Counter-Defendant Washoe-Mill Apartments (“WMA”) entered into a partnership agreement in order to construct and operate a United States Department of

1 Housing and Urban Development (“HUD”) subsidized facility for seniors and disabled
2 citizens, the Washoe-Mill Apartments. In 1993, Bank of America Nevada (“BOAN”) and
3 the Washoe Housing Finance Corporation (“WHFC”) entered into a Trust Indenture
4 Agreement (“Agreement”) regarding bonds used to refinance WMA’s mortgage loans for
5 the WMA facility. Under the Agreement, BOAN was the trustee of the bond proceeds
6 and was charged with making payments to bondholders. These bonds were tax-exempt,
7 the mortgage was insured by HUD, and WMA received rental subsidies from HUD. U.S.
8 Bank is BOAN’s successor in interest under the Agreement.

9 The WMA facility was sold on January 21, 2011, and the payoff amount for the
10 mortgage loan was remitted as full settlement of the mortgage. A year later, in January
11 2012, a trust officer for U.S. Bank informed WMA that it had conducted an audit that
12 revealed the existence of \$229,160.81 remaining in the trust account. U.S. Bank
13 conducted an investigation to determine who the funds belonged to but was unable to
14 reach a conclusion; U.S. Bank asserts no beneficial interest in the remaining balance.

15 **B. Procedural History**

16 On August 8, 2012, WMA initiated this action against U.S. Bank, asserting a
17 single claim for conversion. On October 9, 2012, U.S. Bank answered and brought a
18 counterclaim for interpleader against WMA and HUD. (Dkt. no. 6.) On February 5, 2013,
19 the Court held a scheduling conference in response to U.S. Bank’s request. The parties
20 advised the Court of their respective positions, including HUD’s plan to seek summary
21 judgment and U.S. Bank’s plan to file a motion to interplead the disputed funds. (Dkt. no.
22 19.) The parties stipulated to interplead the funds without requiring U.S. Bank to file a
23 motion. (Dkt. no. 22.) HUD subsequently moved for summary judgment, which the Court
24 granted. The Court found that the funds belong to HUD, and further ruled that it would
25 order disbursement once U.S. Bank’s request for fees and costs had been adjudicated.
26 (Dkt. no. 43.) In a subsequent Order, the Court found that U.S. Bank is entitled to
27 reasonable attorneys’ fees and costs in its role as interpleader, but was unable to
28 determine an appropriate calculation because U.S. Bank failed to delineate the fees and

1 costs it incurred as interpleader. (Dkt. no. 53.) The Court gave U.S. Bank leave to bring
2 another motion for attorneys' fees relating to its role as interpleader and a separate
3 motion for attorneys' fees relating to its defense of the conversion claim. (*Id.*)

4 These motions are now before the Court. Although HUD filed responses to both
5 motions, the responses are the same. (Dkt. nos. 62, 63.) WMA opposed the motion for
6 fees relating to U.S. Bank's defense of WMA's claim and joined in HUD's responses.
7 (Dkt. nos. 61, 64.) U.S. Bank filed reply briefs. (Dkt. nos. 70, 71.)

8
9 **III. MOTION FOR FEES AND COSTS RELATED TO THE INTERPLEADER ACTION (DKT NO. 54)**

10 The Court has determined that U.S. Bank is entitled to reasonable attorneys' fees
11 and costs relating to its role as interpleader. (Dkt. no. 53.) The only issue remaining is
12 whether U.S. Bank's requested fees are reasonable. In its first motion for fees, U.S.
13 Bank requested \$39,674.92 for fees and costs, but failed to delineate fees and costs
14 relating to its role as interpleader. (Dkt. no. 38 at 13.) In its current motion, U.S. Bank
15 requests \$29,148.41 as fees and costs relating to the interpleader action. (Dkt. no. 54.)
16 The Court agrees with HUD that the fees requested exceed the scope of U.S. Bank's
17 role as interpleader.

18 The parties agree that the determination of the amount of fees to be awarded in
19 an interpleader action is committed to the Court's discretion. *See Trs. of Dirs. Guild of*
20 *Am. v. Tise*, 234 F.3d 415, 426 (9th Cir. 2000) (citing *Schirmer Stevedoring Co. v.*
21 *Seaboard Stevedoring Corp.*, 306 F.2d 188, 194 (9th Cir. 1962)). "Because the
22 interpleader plaintiff is supposed to be disinterested in the ultimate disposition of the
23 fund, attorneys' fee awards are properly limited to those fees that are incurred in filing
24 the action and pursuing the [interpleader's] release from liability, *not* in litigating the
25 merits of the adverse claimants' positions." *Id.* (citing *Schirmer*, 306 F.2d at 194). Due to
26 the narrow role of the interpleader, the fees awarded to the interpleader "are typically
27 limited." *Id.*

28 ///

1 The information submitted in support of U.S. Bank's request creates a challenge
2 for the Court in exercising its discretion here. U.S. Bank concedes that the interpleader is
3 not complex, but contends that it has been forced to actively litigate this case in part
4 because of WMA's conversion claim, which it claims is so intertwined with the
5 interpleader action that it is difficult to separate the fees incurred.¹ This would suggest
6 that the defense of the conversion claim would have involved more work and thus should
7 have resulted in more substantial fees, but U.S. Bank's request allocates the majority of
8 the fees — about 75% of the initial fees requested — to the interpleader action.² As for
9 the motion practice relating to the interpleaded funds, U.S. Bank's response to HUD's
10 motion for summary judgment mainly addresses its request for fees and is not
11 complicated. (Dkt. no. 27.) U.S. Bank also claims that it has had to participate in
12 discovery, but fails to identify what discovery would have been related to the interpleader
13 action. In the Stipulated Discovery Plan and Scheduling Order, HUD contended that no
14 discovery was needed, WMA identified that discovery would be needed on accounting of
15 the funds and calculations of repayment under Section 413 of the Agreement, and U.S.
16 Bank maintained that if it was not dismissed, then discovery would be needed. (Dkt. no.
17 20.) This would suggest that most, if not all, discovery conducted related to WMA's
18 conversion claim. Moreover, U.S. Bank identifies work before it filed its counterclaim for
19 interpleader as services related to both the interpleader and the defense of WMA's
20 conversion claim, but those services appear to be related to the response to the
21 conversion claim.

22 The Court agrees with HUD that the interpleader action is rather straightforward.
23 U.S. Bank asserted a counterclaim for interpleader, prepared a motion to interplead that
24 was never filed because the parties stipulated to interplead the funds, responded to

25
26 ¹While it may be a challenge to separate the billings for the interpleader and the
27 defense work, this was primarily due to counsel's failure to maintain separate billings to
28 begin with.

²U.S. Bank now requests \$21,830.09 for fees relating to its defense of WMA's
conversion claim. (Dkt. no. 55 at 10.)

1 HUD's motion for summary judgment asserting entitlement to the interpleaded funds by
 2 raising a claim for fees, and filed multiple requests for fees and one motion to be relieved
 3 as a stakeholder. Services rendered in connection with these tasks relate to U.S. Bank's
 4 role as interpleader and the resulting fees incurred are reasonable. However, the fees
 5 identified in the billings submitted with U.S. Bank's motion exceed the scope of these
 6 tasks. U.S. Bank is therefore directed to submit an affidavit of fees to identify the fees
 7 incurred relating to these tasks.

8 **IV. MOTION FOR FEES AND COSTS RELATED TO DEFENSE OF WMA'S**
 9 **CONVERSION CLAIM (DKT. NO. 55)**

10 U.S. Bank seeks reimbursement of fees relating to its defense of WMA's
 11 conversion claim from the interpleaded funds. "In federal litigation, the American Rule
 12 generally precludes an award of attorneys' fees absent statutory authorization or an
 13 enforceable contractual fees provision." *Golden Pisces, Inc. v. Fred Wahl Marine Const.*
 14 *Inc.*, 495 F.3d 1078, 1081 (9th Cir. 2007). U.S. Bank argues that it is entitled to fees
 15 incurred in this case under the contractual fee provisions found in sections 705(2) and
 16 (4) of the Agreement. WMA counters that section 705 is not an attorneys' fees provision.
 17 The Court agrees.

18 The provisions in section 705 that U.S. Bank relies upon do not expressly address
 19 an award of attorneys' fees to the prevailing party in the event of a dispute. Section 705
 20 provides that "[t]he Issuer [WMA] agrees that the Trustee [U.S Bank] shall:

21 (2) except as otherwise expressly provided herein, be reimbursed
 22 upon its request for all reasonable expenses, disbursements and advances
 23 incurred or made by the Trustee in accordance with any provision of this
 24 Indenture (including the reasonable compensation and the expenses and
 disbursements of its agents and counsel), except any such expense,
 disbursement or advance as may be attributable to its negligence or bad
 faith as determined by a court of competent jurisdiction;

25 * * *

26 (4) be indemnified and held harmless against any loss, liability or
 27 expense incurred without negligence or bad faith on its part, arising out of
 28 or in connection with the acceptance or administration of this trust,
 including the costs and expenses of defending itself against any claim or
 liability in connection with the exercise or performance of any of its powers
 or duties hereunder.

1 (Dkt. no. 27-2 at 55.) Section 705(2) addresses reimbursement of “expenses,
2 disbursements and advances.” (*Id.*) Section 705(4) addresses WMA’s indemnification
3 obligations arising out of the administration of the trust. (*Id.*) Neither section allows for an
4 award of fees to the prevailing party. U.S. Bank, however, has not asserted a claim for
5 breach of section 705’s expense or indemnification provisions against WMA, and the
6 issue of whether WMA’s conversion claim falls within section 705 has not been
7 adjudicated. In fact, that issue is not even presented in this case. U.S. Bank is
8 essentially attempting to improperly use section 705 as a device for overcoming the
9 American Rule.

10 For these reasons, U.S. Bank’s request for fees relating to its defense of WMA’s
11 conversion claim is denied.

12 **V. CONCLUSION**

13 The Court notes that the parties made several arguments and cited to several
14 cases not discussed above. The Court has reviewed these arguments and cases and
15 determines that they do not warrant discussion as they do not affect the outcome of U.S.
16 Bank’s motions.

17 It is therefore ordered that U.S. Bank’s Motion for Fees and Costs Related to the
18 Interpleader Action (dkt. no. 54) is granted in part and denied in part. The requested
19 costs are granted. The requested fees are denied. U.S. Bank has fifteen (15) days to
20 submit an affidavit of fees from its counsel identifying the fees incurred relating to the
21 tasks that the Court determined to have been performed in connection with the
22 interpleader action. HUD has fifteen (15) days to object and in that event, U.S. Bank has
23 fifteen (15) days to respond. Upon the Court’s resolution of the amount of fees, U.S.
24 Bank will be relieved as a stakeholder in this action.

25 ///


26 ///

27 ///

28 ///

1 It is further ordered that U.S. Bank's Motion for Fees and Costs Related to Its
2 Defense of Washoe-Mill Apartment's Conversion Claim (dkt. no. 55) is denied.

3 DATED THIS 27th day of March 2015.

4
5 
6 _____
7 MIRANDA M. DU
8 UNITED STATES DISTRICT JUDGE
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28